

MEMORANDUM OF AGREEMENT
PERTAINING TO
THE DEVELOPMENT OF A COMMUNITY BROADBAND PROJECT
AND OTHER RELATED TECHNOLOGY PROJECTS

This Memorandum of Agreement Pertaining to the Development of a Community Broadband Project and Other Related Technology Projects (the "MOA") is entered into by and between the City of Albuquerque, a New Mexico municipal corporation (the "City") and The Regents of The University of New Mexico, a constitutionally created educational institution of the State of New Mexico ("UNM") (collectively, the "Parties").

RECITALS

WHEREAS, the Parties desire to undertake cooperative and comprehensive initiatives to expand educational and economic opportunities for the citizens of the Albuquerque metropolitan area;

WHEREAS, the Parties seek to leverage individual and collective assets to the best overall economic and educational benefit for the citizens of the Albuquerque metropolitan area;

WHEREAS, the Parties are willing to jointly fund, develop and manage activities that will provide a basis for improved asset and infrastructure design, as well as improved development, maintenance and utilization of technology resources; and

WHEREAS, the Parties agree in principle that the purpose of this MOA is to provide a format for articulating current and future technological collaboration opportunities, with additional activities that follow this initial phase being the subject of amendments to this MOA or a "scope of work" incorporated as an addenda to this MOA.

NOW, THEREFORE, the City and UNM agree as follows:

1. Purpose. This MOA serves to identify opportunities for technological collaboration between UNM and the City as set forth in the Recitals, which are hereby incorporated herein.

2. Initial Collaboration Opportunities. The City and UNM agree to collaborate on technology projects and have identified the following initial collaboration opportunities:

2.1 Municipal and Neighborhood Broadband Network Development. Each of the City and UNM, for its own purposes, plans, designs, constructs and maintains various broadband assets and resources to provide telecommunications capacity. The Parties agree to consider conducting any or all of these opportunities jointly, to include the sharing, bartering, licensing, purchasing, and leasing, as appropriate, of tangible and intangible assets such as rights of way, rooftop access, conduit, interduct, pole access, etc., and the bandwidth that rides on top including Ethernet and Wireless services, as well as human and intellectual resources in the area of network engineering

2.2 Application and Reporting Systems. The City and UNM work with our constituents on various applications today. The City and UNM agree that our efforts can be

complementary, thus improving the service delivered to the citizens of the Albuquerque metropolitan area. The Parties agree to consider conducting any or all of these opportunities jointly, to include the sharing, bartering, licensing, purchasing, and leasing, as appropriate, of tangible and intangible assets such as software and data, as well as human and intellectual resources in application design and development. Areas of opportunity include:

- (i) Transit applications,
- (ii) Collaboration on Sunshine Portals,
- (iii) Crowd-sourcing and open sourcing applications, and
- (iv) Open data initiatives.

2.3 Creating an Environment Favorable to Economic Development. The City and UNM share a mutual interest in enhancing Albuquerque's economic climate through collaboration in activities such as the following:

- (i) Provisioning high speed internet to businesses that require research quality networking,
- (ii) Sharing of broadband assets to the greater benefit of users, and
- (iii) Creating and supporting neighborhoods with access to fiber optics.

These collaborations will require that the city and UNM share information which is not generally public, such as:

- (i) private company intent or plans to relocate or expand in Albuquerque,
- (ii) Scada / water systems / detailed network maps, and
- (iii) IP, homeland security issues with detailed maps.

3. Confidentiality. The City and UNM agree to maintain confidentiality of each other's confidential information to the extent allowed by law, provided such confidential information is explicitly marked as such and maintained by such disclosing party as confidential ("Confidential Information"). Obligations to protect third party information will be governed by separate written agreement between the City, UNM and such third party. If either the City or UNM receives an Inspection of Public Records Act request, or court discovery demand or any other request for the release or inspection of the other party's Confidential Information, the party receiving the request will give timely notice to other party. Timely notice to a party is deemed to be and hereby defined as a sufficient amount of time for that party to consider its legal options in consultation with the other party and intervene in the matter if necessary.

4. Press Releases. The City and UNM agree to coordinate on pre-announcement, press releases communication timing such that content and timing is to the best benefit of both Parties

5. No Waiver. Nothing in this MOA shall be construed to waive any right, claims or defenses available to the Parties heretofore or hereafter.

6. Term and Termination. This MOA shall have a term of three (3) years beginning on the Effective Date as set forth in paragraph 11 below, unless the Parties agree by signed, written agreement to either extend or earlier terminate this MOA.

7. Notices. All notices and other communications under this MOA shall be in writing and shall be deemed duly given: (i) when delivered personally or by prepaid overnight courier, with a record of receipt, (ii) the fifth business day after mailing if mailed by certified mail, return receipt requested, or (iii) the day of transmission, if sent electronically, if there is proof of receipt on the day of transmission or the first day thereafter on which receipt can be verified, to the Parties at the following addresses or e-mail addresses (or to such other address or e-mail address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to the City: Robert J. Perry
Chief Administrative Officer
City of Albuquerque
City / County Bldg. - 11th Floor
Albuquerque, NM 87102
Telephone: (505) 768-3000
E-mail: riperry@cabq.gov

With a copy to: David Tourek
City Attorney
City of Albuquerque
One Civic Plaza, NW
City/County Building- 4th Floor, Room 4015
Albuquerque NM 87102
Telephone: (505) 768-4500
E-mail: dtourek@cabq.gov

If to UNM: Gilbert Gonzales
Chief Information Officer
University of New Mexico
1 University of New Mexico
MSC05-3347
Albuquerque, NM 87131-0001
Telephone: (505) 277-8125
E-mail: cio@unm.edu

With a copy to: Kirsten Martinez
Interim Financial Officer
University of New Mexico
1 University of New Mexico
MSC02-1520
Albuquerque, NM 87131-0001
Telephone: (505) 277-0147
E-mail: kmoeller@unm.edu

8. **Counterparts.** This MOA may be executed in one or more counterparts, including email counterparts, each of which shall be a fully binding and enforceable agreement against the party signing such counterpart, but all such counterparts shall together constitute but one agreement.
9. **Entire Agreement and Amendment.** This MOA includes the complete and entire agreement between the Parties with respect to the subject matter set forth herein, and may be amended by written agreement, signed by each of UNM and the City. As set forth in the Recitals, the Parties may, from time to time, negotiate and set forth terms of collaboration in the form of a written, signed, amendment to this MOA or scope of work incorporated into the terms of this MOA, as may be necessary, to effectuate the transactions contemplated herein.
10. **NM Tort Claims Act.** Each Party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or tangible property to the extent they result from negligence of its employees, and for the City and UNM, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended. In the event of either Party's breach of this MOA, the sole and exclusive remedy shall be the right to terminate this MOA. Neither Party shall have any liability for indirect, incidental, punitive or consequential damages resulting from or arising in connection with this MOA.
11. **Authorized Reps.** This MOA is signed and delivered by an authorized representative of each party as of the date indicated next to the respective signatures below, with the Effective Date to be the date of the last signature affixed hereto.

CITY OF ALBUQUERQUE,
a New Mexico municipal corporation

By: [Signature]
David Tourek, City Attorney

Date: 12/20/, 2011

By: [Signature]
Robert J. Perry, Chief Administrative Officer

Date: 12/21/11, 2011

THE REGENTS OF THE UNIVERSITY OF NEW MEXICO,
a constitutionally created educational institution of the State of New Mexico

By: [Signature]
David Harris, Executive Vice President

Date: 12/19, 2011

By: [Signature]
Gilbert Gonzales, Chief Information Officer

Date: Dec 16 2011

By: [Signature]
Bruce Cherrin, Chief Procurement Officer

Date: 12/16/11, 2011